

*City of Las Vegas*

**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: MAY 14, 2009**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: ABEYANCE - VAR-33762 - APPLICANT/OWNER: OLGA SERGEYEVSKAYA**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION:**     **DENIAL**, If Approved, subject to:

**Planning and Development**

1.     This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.
2.     Sports lighting shall not be allowed within the front and side yard setback areas.

**Public Works**

3.     If the entry gates proposed are to be electrically opened and closed, the gates may be placed immediately behind the street right-of-way line (i.e., on the private property side of where the sidewalk is located). If the entry gate is to manually opened and closed, the gates shall be set back a sufficient distance (a minimum of 18 feet) to allow a vehicle to pull completely out of the public street right-of-way before parking to manually operate the gate. The installation of either swing gates or rolling gates are acceptable as long as no part of the gates, either in the opened or closed position, intrude into the public right-of-way.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is a request for a Variance to allow a 8-foot high wall within the front yard setback area where five-feet is allowed on a 0.46 acres site located at 1640 South Tenaya Way. The proposed wall is composed of CMU block with stucco, for a total wall height of 8-feet. Title 19.012.075 states, "Front yard walls/fences shall be a maximum of five feet with the top three vertical feet open to permit visibility." Therefore, it has been determined that the requested Variance is preferential in nature, as such, the hardship is self-imposed and staff is recommending denial.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b>	
11/23/98	The City Council approved General Plan Amendment (GPA-0027-98) a request to amend a portion of the Southwest Sector of the General Plan from: R (Rural Density Residential) to: DR (Desert Rural Density Residential). The Planning Commission recommended approval.
04/23/09	The Planning Commission accepted a request from the applicant to hold Variance (VAR-33762) in Abeyance the item has been rescheduled for the May 14, 2009 Planning Commission meeting.
<b><i>Related Building Permits/Business Licenses</i></b>	
08/29/95	A building permit (#95876882) was issued for a six-foot high, 375-foot long block wall; and a three-foot high, 70-foot long retaining wall. The permit expired on 08/10/96.
04/09/98	A building permit (#98007412) was issued for a six-foot high, 72-foot long block wall. The permit was finalized on 05/20/98.
10/24/01	A building permit (#1018815) was issued for a six-foot high, 40-foot long block wall; and a four-foot high, 40-foot long retaining wall. The permit expired on 09/14/02.
01/30/02	A building permit (#2001541) was issued for to replace a Burned Busbar. The permit was finalized on 01/31/02.
06/25/04	A building permit (#4016220) was issued for a six-foot high, 146-foot long block wall; and a four-foot high, 88-foot long retaining wall. The permit was finalized on 01/06/05.
12/22/04	A building permit (#32858) was issued for a six-foot high, 21-foot long block wall in the rear yard. The permit was finalized on 01/14/05.
12/06/05	A building permit (#32858) was issued for a patio enclosure and open space converted into living space with no permits. The permit was finalized on 01/13/06.

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02/24/06	A building permit (#32858) was issued for an aluminum patio cover. The permit was finalized on 03/18/06.
<b><i>Pre-Application Meeting</i></b>	
02/25/09	A pre-application meeting was held where submittal requirements for a Variance application to increase height of perimeter fence were discussed.
<b><i>Neighborhood Meeting</i></b>	
A Neighborhood Meeting was not required, nor was one held.	

<b><i>Field Check</i></b>	
03/19/09	During a routine field check staff observed a well maintained single-family residence with no landscaping in the front yard.

<b><i>Details of Application Request</i></b>	
<b><i>Site Area</i></b>	
Gross Acres	0.46 Acres

<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Single-Family Residence	DR (Desert Rural)	R-E (Residence Estates)
North	Single-Family Residence	DR (Desert Rural)	R-E (Residence Estates)
South	Single-Family Residence	DR (Desert Rural)	R-E (Residence Estates)
East	Single-Family Residence	DR (Desert Rural)	R-E (Residence Estates)
West	Single-Family Residence	DR (Desert Rural)	R-PD2 (Residential Planned Development – 2 Units per Acre)

<b><i>Special Districts/Zones</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Compliance</i></b>
<b>Special Area Plan</b>		X	N/A
<b><i>Special Districts/Zones</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Compliance</i></b>
<b>Special Purpose and Overlay Districts</b>		X	N/A
<b>Trails</b>		X	N/A
<b>Rural Preservation Overlay District</b>	X		Y
<b>Development Impact Notification Assessment</b>		X	N/A
<b>Project of Regional Significance</b>		X	N/A

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## **ANALYSIS**

Pursuant to Title 19.012.075, “Front yard walls/fences shall be a maximum of five feet with the top three vertical feet open to permit visibility.” The proposed walls are composed of CMU block with stucco, for a total wall height of 8-feet. Therefore, the requested Variance is preferential in nature as the applicant has chosen to propose a front yard wall height and design that exceed adhere to Title 19 requirements. As such, the hardship is self-imposed and staff is recommending denial.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing a 12-foot wall that is seven-feet taller than the maximum height of five feet allowed in the front yard setback, and four-feet taller than the eight feet allowed in the side yard by Title 19.012.075. Alternative design would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

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**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 11

**ASSEMBLY DISTRICT** 2

**SENATE DISTRICT** 8

**NOTICES MAILED** 159

**APPROVALS** 13

**PROTESTS** 10